IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.R. No. 3049 of 2006
Date of decision: 8.9.2006

Joginder Singh ---- Petitioner

Versus

Moti Lal and another ---- Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. P.S. Sekhon, Advocate for the petitioner.

Mr. Arun Jindal, Advocate for the respondents.

JUDGMENT

In this revision petition filed under Article 227 of the Constitution of India the prayer is for setting aside the order 11.11.2005 passed by the trial court dismissing petitioner's application under Order 39 Rules 1 and 2 of the Code of Civil Procedure and the order dated 23.3.2006 passed by the Additional District Judge, Sangrur whereby his appeal against the trial court order was dismissed.

The petitioner-plaintiff filed a suit for declaration challenging the sale deed dated 18.6.1998 in respect of 13 bighas of land, on the ground that the same was based on fraud and misrepresentation. Along with the suit, the petitioner also filed an application for the grant of temporary injunction. The trial court issued notice of the said application to the defendant-respondents who opposed the prayer made therein. The trial court on consideration of the matter, while declining the prayer for grant of temporary injunction, in para 6 of its order noticed as under:-

> "After hearing, I am of the view that the fact so stated in the case is that the sale deed was executed in the year 1998. The plaintiff has come up to the court to challenge the sale deed

after 7 years. He is not only seller of the land but admittedly his brother also sold the land by way of the said sale deed. His brother has not raised any little finger. Plaintiff has awaken after 7 years that too when mutation was already effected. Sale deed is a registered document which has been executed in the presence of the public servant i.e. Registering officer/ Sub Registrar. It carries presumption of truth. Plaintiff has tried to high light that in fact documents executed by him was affidavit relating to motor connection and he stated that Naib Tehsildar also told him that it was affidavit for installation of Motor connection but till now no action has been taken against Naib Tehsildar. The circumstances so stated by the plaintiff at this stage do not disclose any prima facie case in his favour nor the balance of convenience lies in his favour. Sale deed mentioned the delivery of the possession to the defendants. The plaintiff failed to establish the possession over the suit property to seek the injunction. The plaintiff has tried to place on record the order of the Assistant Collector, dated 1.8.2005 on the basis of the application dated 27.5.2005 to show that his possession has been established by the collector but the fact remains that this application was moved on 27.5.2005 before the collector i.e. after filing of the suit i.e. 20.5.2005. The law is very much clear that if correctness of some entry of khasra girdawari is under consideration of civil court, corrections made by the revenue authorities would be irrelevant. Correctness of the same is to be determined by civil court independently on the basis of evidence led. For this I draw support from Samma Singh Vs. Thakar Singh 1997(1) Civil Court Cases 243 (P&H), so referred. Finding no case in favour of the plaintiff for injunction, the injunction application is dismissed. Any observation made herein shall have no effect on the merits of the case."

The order of the trial court was affirmed by the Additional District Judge, Sangrur. It deserves to be noticed that the sale deed impugned by the plaintiff was admittedly executed on 18.6.1998 and it has been challenged after a period of about seven years by filing the present civil suit in May 2005. As per the stand of the defendants, even the mutation in respect of sale of the suit land has also been sanctioned in favour of the

defendants. In order to get the relief of an interim or temporary injunction under Order 39 Rules 1 and 2, the plaintiff is required to satisfy the court on three counts, namely, a prima facie case in his favour, the balance of convenience tilts in his favour and that he will suffer an irreparable loss in case the injunction is refused. Counsel for the petitioner-plaintiff has not been able to satisfy any of the aforesaid three ingredients so as to persuade this Court to interfere with the discretion exercised by the courts below. There is thus, no merit in the revision petition.

In view of the above, the revision petition is dismissed. It is made clear that nothing said herein shall be construed as an expression of opinion on the merits of the controversy involved in the suit.

(AJAY KUMAR MITTAL)
JUDGE

September 08, 2006
MALIK